



STEPHANIE SEIDMAN  
FISH & RICHARDSON PC  
12390 EL CAMINO REAL  
SAN DIEGO, CA 92130-2081

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**JAN 19 2007**

**OFFICE OF PETITIONS**

In re Application of :  
Daniel J. Von Seggern :  
Application No. 10/808,758 : ON PETITION  
Filed: March 24, 2004 :  
Attorney Docket No. 22908-1239 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 22, 2006, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application (Notice), mailed September 16, 2005, which requires the submission of an executed oath or declaration, a \$65 surcharge fee for its late filing, and compliance with the sequence listing requirements. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on November 17, 2005. A Notice of Abandonment was mailed on May 22, 2006.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously

filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C). The instant petition lacks items (1) and (3) above.

With respect to item (1), compliance with the sequence requirements set out in the Notice of September 16, 2005 has not been satisfied. Accordingly, before revival can be effected, the sequence requirement must be satisfied.

As to item (3) above, the petition presently does not provide an adequate statement of unintentional delay. More particularly, the sentence "[t]he delay was due to internal communication error when the file for this case was transferred from Fish & Richardson to DLA Piper Rudnick Gray Cary U.S. LLP.," needs further clarification. What was the nature of the communication error which led to the unintentional abandonment of this application?

In sum, the renewed petition under 37 CFR 1.137(b) must be accompanied by a complete reply to the Notice of September 16, 2005 and an explanation of the nature of the miscommunication error which resulted in the unintentional abandonment of this application.

The revocation and power of attorney filed on November 14, 2005 is unacceptable since it fails to comply with the provisions of 37 CFR 3.73(b). In this regard, the reel and frame number where the recorded assignment appears in the Office assignment records is missing. A courtesy copy of this decision is being mailed to petitioner. However, until such time as an acceptable power of attorney is received, all future correspondence regarding this file will continue to be held with the above address of record.


Future correspondence with respect to this matter should be addressed as follows:

By Mail:           Mail Stop PETITION  
                  Commissioner for Patents  
                  P. O. Box 1450  
                  Alexandria, VA 22313-1450

By hand:           U. S. Patent and Trademark Office  
                  Customer Service Window, Mail Stop Petitions  
                  Randolph Building  
                  401 Dulany Street  
                  Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

  
Frances Hicks  
Petitions Examiner  
Office of Petitions

cc:

Patent Group  
DLA Piper Rudnick Gray Cary US LLP  
1200 Nineteenth Street NW  
Washington, DC 20036-2412